

toll of any kind can afterwards be charged for the use of it, by any individual or body politic, who may happen to be the owner of the soil on which the wharf has been erected, or over which the road or street passes. *Hale de Portibus*, 77, 78; *The King v. Winstanley*, 3 *Exch. Rep.* 344; 1817, ch. 71, s. 7, and ch. 225, s. 7. Nor, upon the principles admitted, in regard to the tonnage or port duties imposed by the before mentioned Acts of Assembly, for the benefit of the port of Baltimore, and assented to by Congress, can the Legislature of the State, after a wharf or street, along the shore of a port, had been once dedicated to the public, free of all charge, impose any toll so as to infringe upon the rights secured, or the power granted to the Federal Government; which authorizes the charging of wharfage for the landing of articles other than the productions of this State. 1827, ch. 162, s. 4; *Gibbons v. Ogden*, 9 *Wheat.* 196; *Brown v. The State of Maryland*, 12 *Wheat.* 442; *The Steam Boat Company v. Livingston*, 1 *Hopkins*, 209.

In this case, therefore, it is not only important as regards the interests of these contending parties themselves, that the title to charge wharfage for the use of these wharves should be clearly shewn; but it is also necessary that the right now claimed should be distinctly ascertained for the benefit of the people at large, and to prevent the Federal and State Governments from being brought into collision, by means of a wharfage duty collected under a State authority, pushing aside, or interfering with those on importations proposed to be collected under the Federal Government.

\* In regard to the subject of this controversy, it appears from the various legislative enactments in relation to it, **376** that in the year 1766, the inhabitants of Baltimore, by their petition to the General Assembly, set forth that a large miry marsh, adjoining the town, was very prejudicial to the health of its inhabitants; and that the proprietors thereof, by their perverseness, or dilatoriness, had refused or neglected to remove the nuisance, which could only be done by changing the surface of the marsh into firm dry ground. Whereupon it was enacted, that Thomas Harrison, &c., the owners of the said marsh, should, within one month after the end of that session of Assembly, give bond in a certain penalty, with surety to be approved by the commissioners therein named, within two years from the date, to remove the nuisance, "by wharfing in all such marshy ground next the water," &c.; and should also "cover all such marshy ground with stones, gravel, sand, or dirt, so as to raise the same lot not less than two feet above the level of common flood tides." And it was further declared, that the said marshy ground should be laid out by the said commissioners into streets, lanes, and alleys, and thenceforth be deemed a part of Baltimore Town. And in case the said Thomas Harrison should neglect to give bond as